

(1985) 01 RAJ CK 0084

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 92 of 1978

Sagarmal Bastimal

APPELLANT

Vs

Bhikamchand and Pukhraj

RESPONDENT

Date of Decision : 21-01-1985

Acts Referred:

Provincial Insolvency Act, 1920 — Section 7

Citation : (1985) WLN 21

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.M. Lodha, J.—This is an appeal against the judgment dismissing the insolvency petition. The learned Additional District Judge, Sirohi held that the respondent committed an act of insolvency inasmuch as he transferred all his immovable properties in favour of his wife and sons on 13th June, 1972 and got a gift deed registered on 15th June, 1972. It was also held that the debt was more than Rs. 500/- but since it was not a liquidated sum, the insolvency petition could not be entertained.

2. Against the above judgment, the applicant-appellant has filed the present appeal.

3. Before I proceed to consider the rival contentions of learned counsel for the parties, it may be mentioned that the insolvency petition was filed u/s 7 of the Provincial Insolvency Act. It was alleged that Bhikam Chand and Pukhraj should be declared insolvent as they have committed several acts of insolvency. Bhikam Chand and Pukhraj were carrying on business in the name of Pukhraj and Bhikam Chand. The applicants' allegation is that an amount of Rs. 37,225.43 p. was due towards the respondent but the respondent have gifted their entire property and are not paying the said amount.

4. The case of the non-applicants-respondents was that though they were

dealing with the applicant but the applicant has failed to furnish the accounts and, therefore, unless the accounts are finalised it is not possible to ascertain the exact amount.

5. In reply, the applicant submitted that the non-applicants have come out with a false defence.

6. The applicant examined, Heerachand & Takhatraj, Pratapchand, Phojmal. The non-applicants examined Pukhraj Dharamchand and Gomraj. Certain documents were also filed.

7. The whole controversy which has been raised before the lower court and here also is, whether the amount alleged to be due can be termed as liquidated which means certain settled adjusted and manifested. The case of the applicants is that the non-applicants used to get goods on Aarat basis & the applicant used to send the goods and the applicants also used to receive the goods from the non-applicants.

8. The applicant appellant also admitted that some amounts were also paid by the applicant to other parties on behalf of the non-applicants and their accounts have been debited by freight, expenses interest etc. It was also stated that the non-applicants paid the amounts in time which have been credited.

9. The non-applicant Pukhraj in his statement stated that nothing is due of the applicant and he also produced the accounts.

10. The learned trial Court relied upon the decisions of Madras High Court in P.N V. Ratnasami Naidu v. K.S.P.A. Subba Reddiar AIR 1943 Mad 776 wherein it has been held that when there are entries in the accounts which are open to serious disputes and there are counter claims to which the items are true and, in such a situation, it cannot be termed as liquidated sum.

11. In this appeal, the appellant submitted that the learned Judge did not properly construe the reply of the non-applicants who submitted in the reply that the amount due will not be more than Rs. 5,000/- or Rs. 7,000/-.

12. I have carefully considered the submissions of the learned counsel for the parties. The reply of the non-applicants certainly makes a reference that the amount due cannot be more than Rs. 5,000/- or Rs. 7,000/-, and the trial court has ignored this aspect of the case. It is also to be noticed that ExA-8, A-9, & A-10 filed by the respondents show that the accounts books of the parties were compared and settled though there may be some difference.

13. In view of the above, I am unable to appreciate the finding that the sum is not liquidated.

14. I am also persuaded to accept the contention of the appellant that simply because there are numerous entries in the accounts books, it can not be ground for holding that the sum is not "liquidated sum".

15. It is clear that the amount due is more than Rs. 5,000/- and, therefore, it cannot be said that there is no "liquidated sum".

16. Moreover, the debtor has made a gift and, therefore, even within the meaning of Section 25 of the Insolvency Act, act of insolvency has also been committed.

17. I am, therefore, convinced that the insolvency petition was maintainable.

18. The result of the above discussion is that the appeal is accepted and the impugned judgment passed by the learned Additional District Judge, Sirohi dated 3rd August, 1974 holding that the insolvency petition is not maintainable is set aside. It is held that the insolvency petition is maintainable and, therefore, the lower court should entertain insolvency petition and proceed further in the matter as contemplated by law, forthwith by day to day proceedings and decide it without any further delay.

19. There would be no order as to costs.